

FCC MAIL SECTION

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

May 27 1 39 PM '04

DISPATCHED

In the Matter of

Telephone Number Portability

Petition of Yorkville Telephone Cooperative Inc.  
and Yorkville Communications, Inc. for Limited  
Waiver and Extension of Time to Port Numbers to  
Wireless Carriers, To Support Nationwide  
Roaming of Ported Numbers, and to Participate in  
Thousands-Block Number PoolingPetition of TMP Corp. and TMP Jacksonville,  
LLC for Waiver of Section 52.31(a) of the  
Commission's rulesPetition of Choice Wireless, LC for Waiver of  
Section 52.31(a) of the Commission's Rules

CC Docket No. 95-116

**ORDER****Adopted: May 21, 2004****Released: May 24, 2004**

By the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this order, we deny the petitions for waiver filed by Yorkville Telecommunications Cooperative and Yorkville Communications, Inc. (Yorkville), TMP Corp. and TMP Jacksonville, LLC (the TMP Companies), and Choice Wireless, LC (Choice Wireless) to extend the May 24<sup>th</sup> local number portability (LNP) implementation deadline.<sup>1</sup> We deny the waiver requests based on our finding that petitioners have failed to demonstrate that special circumstances exist to warrant an extension of the porting deadline. We also find that it is in the public interest to deny the petitions. We will not, however, enforce petitioners' LNP obligations until sixty days after the date of release of this order. We find that a

<sup>1</sup> See Telephone Number Portability, CC Docket No. 95-116, Petition for Limited Waiver and Extension of Time to Port Numbers to Wireless Carriers, to Support Nationwide Roaming of Ported Numbers and to Participate in Thousands-Block Number Pooling from Yorkville Telephone Cooperative, Inc. and Yorkville Communications, Inc., filed March 18, 2004 (Yorkville Petition); Petition for Waiver of Section 52.31(a) of the Commission's Rules from TMP Corp. and TMP Jacksonville, LLC, filed March 23, 2004 (TMP Companies Petition); and Petition for Waiver of Section 52.31(a) of the Commission's Rules from Choice Wireless, LC, filed March 24, 2004 (Choice Wireless Petition).

sixty-day non-enforcement period will provide the petitioners with a reasonable amount of time to properly implement and commence porting.

## II. BACKGROUND

2. *Local Number Portability.* Under the Commission's LNP rules, commercial mobile radio service (CMRS) carriers were required to offer number portability in the largest 100 metropolitan statistical areas (MSAs) by November 24, 2003.<sup>2</sup> Outside the largest 100 MSAs, CMRS carriers are required to support number portability by May 24, 2004, or within six months after receiving a request for number portability, whichever is later.<sup>3</sup>

3. *Petitions.* The petitioners contend that, although they have worked diligently to prepare for porting, they need additional time to complete technical upgrades to their switches. Specifically, Yorkville explains that it has recently identified hardware and software upgrades to its switching system that will permit porting and expects installation and activation of these features by August 24, 2004.<sup>4</sup> Yorkville also requests a three-month extension of time to support nationwide roaming of ported numbers and to participate in thousands-block number pooling.<sup>5</sup> The TMP Companies state that, after experiencing problems upgrading their existing switch to meet the Commission's TTY requirements, they decided to replace the switch entirely.<sup>6</sup> The companies report that they expected installation of a new switch to be completed by April 15, 2004, but that they recently have been informed by their vendor that installation of the new switch will be delayed.<sup>7</sup> They seek an extension of the implementation deadline until November 24, 2004. Choice Wireless states that software-related failures it experienced during the fourth quarter of 2003 led it to conclude that it was not technically feasible or fiscally responsible to add features to its existing switch for porting.<sup>8</sup> Accordingly, Choice states that it has decided to replace its existing switch. Choice notes that, because of some delay associated with the lender approval process, it is in the final stages of receiving and reviewing a bid to replace its current equipment and expects installation of its new LNP-capable switch to extend beyond the May implementation deadline.<sup>9</sup> It seeks an extension of the deadline until September 24, 2004.<sup>10</sup>

4. Verizon Wireless (Verizon), Dobson Communications Corporation (Dobson), and Nextel Communications (Nextel) each filed comments opposing the requests for waiver, arguing that petitioners have failed to demonstrate that good cause exists for an extension of time to comply with the porting

<sup>2</sup> 47 C.F.R. § 52.31; Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002) (2002 Forbearance Order).

<sup>3</sup> Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7314 (1997) (*First Memorandum Opinion and Order*); 2002 Forbearance Order, 17 FCC Rcd at 14986.

<sup>4</sup> See Yorkville Petition at 4.

<sup>5</sup> *Id.* at 1.

<sup>6</sup> See TMP Companies Petition at 2.

<sup>7</sup> *Id.* at 2-3.

<sup>8</sup> See Choice Wireless Petition at 2.

<sup>9</sup> *Id.*

<sup>10</sup> Subsequently, Choice Wireless modified its waiver request and is now seeking an extension of time until July 1, 2004. See Letter from Sylvia Lesse, Kraskin, Moorman, and Cosson, LLC to Marlene H. Dortch, Secretary, FCC, filed May 7, 2004 (Choice Wireless May 7<sup>th</sup> ex parte).

requirements.<sup>11</sup> In addition, Verizon, Dobson, and Nextel argue that granting waivers would hurt consumers and would complicate porting procedures for other carriers. The National Telecommunications Cooperative Association filed comments supporting the waiver requests, noting that petitioners do not ask to be permanently relieved of their LNP obligations nor do they ask for an unlimited time in which to become compliant.<sup>12</sup>

5. *Waiver Standard.* The Commission may, on its own motion, waive its rules when good cause is demonstrated.<sup>13</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>14</sup> In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>15</sup> Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.<sup>16</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>17</sup> In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule.<sup>18</sup>

### III. DISCUSSION

6. We find that petitioners have failed to demonstrate that good cause exists to grant waivers of the May 24, 2004, LNP implementation deadline. Specifically, we find that petitioners have failed to provide substantial, credible evidence of special circumstances that warrant an extension of time to comply with the LNP requirements. We also find that petitioners have failed to demonstrate that granting their requests for waiver would serve the public interest. Accordingly, we deny petitioners' requests for waiver. We decline, however, to enforce the LNP obligations at issue for sixty days following the date of release of this order.

7. *Special Circumstances.* We are not persuaded by petitioners' claims that special circumstances exist to support a waiver. Specifically, we find that petitioners have failed to demonstrate that the technical readiness issues they cite as the basis for their waiver requests could not have been prevented had petitioners made timely efforts to prepare for porting. Petitioners have been on notice of the number portability requirements since 1996.<sup>19</sup> In July, 2002, after previously extending the deadline twice, the Commission determined that CMRS carriers serving the 100 largest MSAs would be required to begin providing LNP by November 24, 2003.<sup>20</sup> The Commission indicated that CMRS carriers outside the 100 largest MSAs would be required to begin providing LNP by May 24, 2004, or within six months

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<sup>11</sup> Verizon Wireless Comments (Verizon Wireless Comments), Dobson Communications Corporation Comments (Dobson Comments), and Nextel Communications Comments (Nextel Comments).

<sup>12</sup> National Telecommunications Cooperative Association Comments at 1.

<sup>13</sup> 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

<sup>15</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>16</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>17</sup> *Id.* at 1159.

<sup>18</sup> 47 C.F.R. § 52.23(e); see also 47 C.F.R. § 52.31(d).

<sup>19</sup> Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996).

<sup>20</sup> See 2002 Forbearance Order, 17 FCC Rcd at 14982 (2002).

after receiving a request to provide LNP from another carrier, whichever was later.<sup>21</sup>

8. Despite this long period of notice, it appears that certain petitioners have only recently initiated efforts to prepare for porting. Yorkville, for example, states that its efforts to prepare for porting occurred "during the past several months."<sup>22</sup> As of the time of Choice Wireless's filing, in March, 2004, Choice noted that it "ha[d] not finalized its purchase or schedule for installation of the portability-capable switch."<sup>23</sup> In view of the extended amount of lead time that was available to prepare for porting, it is reasonable to expect that petitioners should have taken steps to ensure their technical readiness at an earlier time.

9. Similarly, the TMP Companies fail to provide sufficient evidence of timely preparations. The TMP Companies acknowledge that, even before they learned of a delay from their vendor, they expected installation of their LNP-capable switch on April 15, 2004, only a month and eight days before the May LNP implementation deadline.<sup>24</sup> The TMP Companies fail to explain why they scheduled installation of basic porting technology so close to the compliance deadline.

10. *Public Interest.* We conclude also that petitioners have failed to show that granting their requests for waiver would serve the public interest. The Commission's number portability requirements are an important tool for promoting competition and bringing more choice to consumers. These benefits are particularly important in smaller markets across the country where competition may be less robust than in more urban areas. Accordingly, it is in the public interest that carriers implement porting as quickly as possible. Granting petitioners' waiver requests would slow the LNP implementation process and limit the choices available to consumers in the markets petitioners serve. In addition, allowing petitioners each to establish different implementation schedules could cause confusion among consumers considering porting their numbers.

11. *Roaming Support and Number Pooling.* For the reasons stated above, we also reject Yorkville's request for a three-month extension of time to support nationwide roaming of ported numbers and to participate in thousands-block number pooling.<sup>25</sup> Yorkville has failed to demonstrate that it made timely efforts to prepare to meet these requirements. In addition, we find that granting a waiver of these requirements would not serve the public interest.

12. *Non-Enforcement.* Although we are not persuaded that waivers of the porting requirements are justified, we decline to enforce petitioners' porting obligations for sixty days following the date of release of this order. We find that allowing petitioners some limited time to complete upgrades to their systems is reasonable.<sup>26</sup> Non-enforcement for sixty days will also help avoid any network disruptions and maximize trouble free operation of porting.

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<sup>21</sup> *Id.* at 14986.

<sup>22</sup> Yorkville Petition at 2.

<sup>23</sup> Choice Wireless Petition at 2.

<sup>24</sup> TMP Companies Petition at 2.

<sup>25</sup> We note that, under Commission rules and orders, all wireless carriers were required to support roaming nationwide by customers with pooled or ported numbers by November 24, 2002. See 47 C.F.R. § 52.31(a)(2). See also, 2002 Forbearance Order, 17 FCC Rcd at 14986.

<sup>26</sup> As noted earlier, Choice Wireless has indicated that it expects to be able to provide LNP by July 1, 2004. See Choice Wireless May 7<sup>th</sup> ex parte. In addition, Yorkville has indicated that it may achieve readiness for porting as early as mid-June. See Letter from Pamela L. Gist, Counsel for Yorkville Telephone Cooperative Inc. and Yorkville Communications, Inc. to Marlene H. Dortch, Secretary, FCC, filed May 5, 2004.

**IV. ORDERING CLAUSE**

13. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the petitions filed by Yorkville, the TMP Companies, and Choice Wireless are DENIED.

FEDERAL COMMUNICATIONS COMMISSION



John B. Muleta  
Chief, Wireless Telecommunications Bureau